IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5551 OF 2005

Navshya Kakad Wahat @ Gangoda. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Mrs.Glady Pereira-Mahimkar for the Applicant.
Shri A.S.Gadkari, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 14th Sept., 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. for the State. The Applicant and the co-accused are being prosecuted for offence under sections 395, 397, 342, 452, 412 of the Indian Penal Code.

2. The learned Advocate for the Applicant submitted that two co-accused have been enlarged on bail and the Applicant is entitled to parity. The learned Advocate also pointed out that the test identification parade for the offence committed on 26th November 2003 is held on 24th August 2004. The learned Advocate also pointed out that corrections and interpolations are made in the memorandum recorded at the time of holding test identification parade and therefore, the test identification parade becomes doubtful because of the over-writing, and consequently, the Applicant is entitled to be enlarged on bail.

3. The learned A.P.P. pointed out that the Applicant

cannot claim parity. He submitted that large number of cases have been registered against the Applicant alleging commission of similar offences. He therefore, submitted that no case is made out for grant of bail.

4. The provisions of Maharashtra Control of Organized Crimes Act, 1999 have been applied and therefore, the case will be governed by section 21(4) of the said Act of 1999. As of today there is evidence of test identification parade in which the Applicant has been identified by the first informant. In so far as the evidentiary value of the said test identification parade is concerned, the same will have to be tested on evidence. The Applicant cannot claim parity as the other two co-accused who have been enlarged on bail were not identified in the test identification parade and there was no recovery made at their instance. In the present case the Applicant has been allegedly identified in the test identification parade by the first informant. Considering the material on record, it is impossible to come to the conclusion that there is no possibility of the Applicant being convicted for offence under the said Act of 1999. Apart from that there are criminal antecedents of the Applicant. No case is made out for enlarging the Applicant on bail. The Application is rejected.

Judge.